

United States ³
Circuit Court of Appeals
For the Ninth Circuit.

K. HIRATA,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED

AUG 23 1922

F. D. MONCKTON,
CLERK,

United States
Circuit Court of Appeals
For the Ninth Circuit.

K. HIRATA,

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[1*]

[Title of Court and Cause.]

No. 6243.

Indictment.

Vio. Act of Dec. 17, 1914, as amended.

The United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America,
being duly selected, impaneled, sworn and charged
to inquire within and for the Northern Division of
the Western District of Washington, upon their
oaths present:

*Page-number appearing at foot of page of original certified
Transcript of Record.

That K. Hireta (whose true given name is to the grand jurors unknown), on the sixth day of July, in the year of our Lord one thousand nine hundred and twenty-one, at the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, did then and there knowingly, wilfully, unlawfully and feloniously, and not in the original stamped package nor from the original stamped package, purchase from a person whose name is to the grand jurors unknown, a quantity, to wit, four (4) packages each containing ten (10) grains, three (3) packages each containing forty-five (45) grains, five (5) packages each containing thirty (30) grains, six (6) packages each containing two (2) grains, and one (1) package containing five (5) grains, of a certain compound, manufacture, salt, derivative and preparation of opium, to wit, morphine, and a quantity, to wit, twenty-one (21) [2] packages each containing thirty (30) grains, one (1) package containing one (1) ounce, and one (1) package containing one-half ($\frac{1}{2}$) ounce, of a certain compound, manufacture, salt, derivative and preparation of coca leaves to wit, cocaine; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That K. Hireta (whose true given name is to the grand jurors unknown), on the sixth day of July,

in the year of our Lord one thousand nine hundred and twenty-one, at the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, did then and there knowingly, wilfully, unlawfully and feloniously manufacture, produce, compound, sell, deal in, dispense, distribute, administer and give away a certain compound, manufacture, salt, derivative and preparation of opium, to wit, morphine, and a certain compound, manufacture, salt, derivative and preparation of coca leaves, to wit, cocaine, without having registered and paid the special tax as required and imposed by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ROBERT C. SAUNDERS,

United States Attorney.

CHARLOTTE KOLMITZ,

Assistant United States Attorney. [3]

[Indorsed]: A True Bill. A. M. Schillestad, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in Open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court September 21, 1921. F. M. Harshberger, Clerk. [4]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 6243.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. HIRETA,

Defendant.

Arraignment and Plea.

Monday, September 26, 1921.

Now on this 26th day of September, 1921, the above-named defendant comes into open court for arraignment accompanied by his attorney Walter Metzenbaum and says that his true name is the same. Whereupon the reading of the information is waived and he here and now enters his plea of not guilty.

Journal Vol. #9, p. 317. [5]

[Title of Court and Cause.]

No. 6243.

Verdict.

We, the jury in the above-entitled cause, find the defendant K. Hireta, is guilty, as charged in Count I of the indictment herein; and further find the defendant K. Hireta, is guilty, as charged in Count II of the indictment herein.

C. B. SANDERSON,

Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 30, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [6]

[Title of Court and Cause.]

No. 6243.

Motion for New Trial.

Comes now defendant and moves the Court to set aside the verdict of the jury heretofore entered herein and grant a new trial of the above-entitled cause on the following grounds:

(1) That said verdict is against and contrary to law.

(2) Said verdict was against and contrary to the evidence.

(3) Errors of law occurring during the trial and excepted to at the time by defendant.

(4) Erroneous instructions given to the jury by the trial judge and excepted to at the time.

(3) That counts I and II of the indictment failed to state facts sufficient to show the commission of any offense by the defendant

(4) Misconduct of the prevailing party.

WALTER METZENBAUM,

Attorney for Defendant.

State of Washington,
County of King,—ss.

Walter Metzenbaum, being first duly sworn, on oath deposes and says: That he is the attorney for defendant in the above numbered and entitled

cause; that as such he prepared said motion, knows the contents thereof and that he believes the same to be meritorious and well founded in law.

WALTER METZENBAUM,

Subscribed and sworn to before me this 12th day of December, 1921.

[Notary Seal] BURTON E. BENNETT,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 12, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [7]

[Title of Court and Cause.]

No. 6243.

Order Denying Motion for New Trial.

Now on this 12th day of December, 1921, the above defendant comes into open court with Walter Metz-enbaum, his attorney and files a motion for new trial. Said motion is denied.

Journal Vo. 9, p. 428. [8]

[Title of Court and Cause.]

No. 6243.

Bail Bond.

We, K. Hirata, of Seattle, Washington, as principal, and L. C. Jacobson and Michael Cohen, as sureties, jointly and severally acknowledge our-

selves to be indebted unto the United States of America in the sum of \$3000, lawful money of the United States to be levied of our goods and chattels, lands and tenements, for the payment of which well and truly to be made, we bind ourselves and each of us, our heirs and executors, jointly and severally firmly by these presents.

The conditions of the above obligation is such that whereas in the above-entitled cause a Writ of Error has been issued to the Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence entered therein, and an order has been entered fixing the amount of the bail bond for the release of the defendant, K. Hirata, upon bail pending the determination of said Writ of Error by said Appellate Court in the sum of \$3000.

NOW, THEREFORE if the said K. Hirata as principal obligor shall appear and surrender himself in the above-entitled court and from time to time thereafter as he may be required to answer any further proceedings and shall obey and perform any judgment or order which may be had or surrendered in said cause and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth Circuit and shall not depart from the said District without leave first having been obtained from the Court, then this obligation shall be null and void, otherwise of full force and effect. [9]

IN WITNESS WHEREOF we have set our hands and seals the 23d day of December, 1921.

K. HIRATA,

By WALTER METZENBAUM, (Seal)

His Atty.,

Principal.

L. C. JACOBSON, (Seal)

MICHAEL COHEN, (Seal)

Sureties.

State of Washington,
County of King,—ss.

L. C. Jacobson and Michael Cohen being first duly sworn, each for himself says: That he is a citizen of the United States; over the age of twenty-one years and a resident of King County, Washington; that he is not an attorney or counselor at law; sheriff or other officer of any court; that he is worth in his own separate property within the state of Washington and over and above all his just debts and liabilities exclusive of property free from sale on execution the sum of \$6000.

L. C. JACOBSON.

MICHAEL COHEN.

Subscribed and sworn to before me this 21st day of December, 1921.

[Notarial Seal]

WALTER METZENBAUM,

Notary Public in and for the State of Washington,
Residing at Seattle.

O. K.

THOS. P. REVELLE,

United States Attorney.

Approved:

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 24, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [10]

[Title of Court and Cause.]

No. 6243.

Amended Bill of Exceptions.

BE IT REMEMBERED, that heretofore, to wit, on the 30th day of November, 1921, this cause came on for trial before the Honorable Jeremiah Neterer, Judge presiding, the plaintiff appearing by Thomas P. Revelle, United States Attorney, the defendant appearing in person and by his attorneys, Thomas D. Page, and Walter Metzenbaum.

THEREUPON, the following proceedings were had: Prior to the calling and empanelling of the jury and after the case was called for trial, the defendant interposed a motion to dismiss the case and discharge the defendant from custody upon the ground that no search-warrant was used or issued at the time of the search of the defendant's premises and the seizure of the contraband upon which the charge contained in the several counts of the indictment were based. This motion is based upon the following motion: [11]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 5243.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. HIRATA,

Defendant.

**Motion for Return of Evidence and Suppression of
Same.**

Comes now the defendant and moves this Court
for an order returning to the defendant and en-
joining the United States District Court for the
Western District of Washington from introducing
in evidence the following morphine and cocaine in
the trial of this cause:

Morphine.

4 packages	10 grains each
3 packages	45 grains each
5 packages	30 grains each
6 packages	2 grains each
1 package	5 grains each

Cocaine.

21 packages	30 grains each
1 package	1 ounce
1 package	1½ ounce

This motion is based on the fact that the said mor-
phine and cocaine were found on the premises and
in the residence of the defendant and that said prem-

ises were entered on that said occasion without a search-warrant by the arresting officers and said morphine and cocaine were taken without the aid of any search-warrant and in violation of the constitutional rights of the defendant.

T. D. PAGE,

WALTER METZENBAUM,

Attorneys for Defendant. [12]

Mr. PAGE.—If your Honor please, I want to interpose a motion, I think this is the proper time to do it, before the taking of the evidence. I move to dismiss this case on the ground that there was no search warrant issued at the time of the taking and seizure of the stuff.

The COURT.—It is too late to raise it now.

Mr. PAGE.—The jury have not been empaneled.

The COURT.—It is too late.

Thereupon, the Court overruled and denied said motion and to the said order of the Court the defendant asked and was allowed an exception. At the time of the presentation of this motion the following proceedings were had:

Mr. PAGE.—I will submit it and take an exception. Let the record show I take an exception to the ruling of the Court, and submit the motion.

The COURT.—Note the exception.

Thereupon the jury was empaneled and sworn and the opening statement of the Government was made.

Testimony of N. P. Anderson, for the Government.

Thereupon Witness N. P. ANDERSON was called by the Government and after being duly sworn testified that on the 6th day of July, 1921, he was a police officer of the city of Seattle and was present at the Hub Hotel at the time of the arrest of the defendant (Tr. p. 3); that it was arranged by the officers present that a girl addict should approach the defendant for the purpose of purchasing from the defendant narcotics; that before the girl went into the hotel witness went in the Watson Hotel, which adjoins the Hub Hotel, and entered the Hub Hotel through a fire door connecting the Watson Hotel and the Hub Hotel; that after entering the Hub Hotel witness concealed himself in a bathroom on the third floor of the same; that while witness was in the bathroom he heard [13] the Japanese talking to the girl on the second floor of the hotel and recognized her voice; then the Japanese came running up the steps from the second floor to the third floor and from the third floor to the fourth floor. Witness then left the bathroom and walked up the steps leading to the fourth floor. Witness then heard the Japanese walking to the front of the building on the fourth floor, where he went into a room on the right-hand side. Witness then returned to the bathroom and closed the door and in about two minutes heard the Japanese come down the steps (Tr. p. 4) and down to the second floor, where he heard him again talking to

(Testimony of N. P. Anderson.)

the woman. He could not hear what they were talking about but recognized their voices. In three or four minutes he heard some loud talking by the Japanese on the second floor and witness then went down to the second floor and the officers had the defendant handcuffed. Defendant was then searched and upon his person were found three one-dollar bills which had been marked by the officers and which were the bills previously given to the girl addict. The officers then took the defendant to the fourth floor and into the front room where witness had seen him enter. In the presence of witness Officer Baerman searched the room and raised the carpet. Underneath the carpet there was a piece of board about 4x14 inches which was loose, and underneath the board there was found by Officer Baerman a cigarbox full of drugs put up in packages. Witness then asked the defendant if he had any more and defendant said, "Yes, there is some more there." Defendant indicated where it was and witness got down and reached in the hole again in the floor and pulled out a lady's black stocking containing narcotics (Tr. p. 5). Witness identifies Government Exhibit No. 1 as the box of narcotics taken out of the floor (Tr. p. 6); witness identifies lady's black stocking [14] containing narcotics as Government's Exhibit No. 2. Witness identifies package of morphine, Government's Exhibit No. 3, as package found in the possession of the girl addict after her transaction with defendant.

(Testimony of N. P. Anderson.)

Witness further identifies his initials on said package of morphine (Tr. p. 7).''

On cross-examination of this witness, the following proceedings were had:

Mr. PAGE.—Q. Do you know what that stuff is you have in your hand?

A. I can judge; it either is morphine or cocaine.

Q. You didn't have any search-warrant when you went in there? A. No, sir.

Q. I move at this time, if your Honor please, to strike all of the testimony, unless they had a *bona fide* search-warrant.

COURT.—Denied.

Mr. PAGE.—Exception.

Q. Now, you knew you had no right in that building without a search-warrant?

The COURT.—I have already ruled that out, Mr. Page; no use in repeating it.

Mr. PAGE.—Can't I ask if that is the law of the State of Washington?

The COURT.—You can have your exception.

Witness further testified on cross-examination that he is a city policeman and at the time of the arrest of the defendant and prior thereto, he was accompanied by another city police officer, R. F. Baerman and Joe Peak, an agent of the White Cross; that there were no Federal agents in the case and no Federal agents or officers present when the arrest was made, or the search was made. That the girl addict was assisting the police officers [15]

(Testimony of N. P. Anderson.)

and was not a Federal agent (Tr. p. 12). That the defendant after his arrest attempted to bribe the officers and in attempting to do so gave them \$75.00 in cash and a check for \$225.00."

Testimony of R. F. Baerman, for the Government.

Thereupon a witness R. F. BAERMAN was called by the Government and after being duly sworn testified that he was a police officer of the city of Seattle at the time of the arrest of the defendant and was present at the time he was arrested. That at the time of the arrest they sent a girl into the Hub Hotel, of which the defendant was proprietor (Tr. p. 16). That prior to her going into the hotel witness gave her \$3.00 in marked money. That the office of the Hub Hotel is on a mezzanine floor; that witness saw the girl meet the defendant in the office and go up the stairway with the defendant to the second floor; that he didn't see her then until she came out. About five or six minutes later, probably a little longer, she came out with a package of morphine in her hand and handed it to witness. Witness then immediately went inside the hotel (Tr. p. 17), walked down to the end of the hall to a room, opened the door and found the defendant in the room. The defendant had a can of money containing silver dollars, a five-dollar bill and a ten-dollar bill, which he threw away. Witness then held the defendant, handcuffed him and asked him where the rest of the stuff was. Defendant said he had no more stuff, that that was all he had. By

(Testimony of R. F. Baerman.)

that time Officer Anderson appeared. The defendant was then searched and the three one-dollar marked bills were taken from his side pocket; that witness had the numbers of the bills on an envelope, which envelope is in evidence.

Witness read the numbers of the bills to the defendant. Then defendant admitted he had sold the morphine and wanted to fix it up right away, saying "I haven't got any more" (Tr. p. 18). Then defendant was taken to the room on the fourth floor and [16] Officer Anderson held the defendant. Witness searched the room and noticed the carpet was not stretched very tight and witness pulled the carpet back and found two boards in the floor that were out and worn from use. Witness put his fingernails at the end of the board and wrenched them out and found in the hole in the floor a cigar-box full of papers of dope. Officer Anderson asked the defendant if he had any more stuff in there and defendant answered: "Yes, there is some more in there," and defendant showed witness which end of the hole it was in. It was in the end of the rafters that pointed south. Officer Anderson reached in and pulled out a stocking containing cocaine. Defendant said he wanted to fix things up with the officers and defendant then took the officers to another room (Tr. p. 19) and first offered the officers \$50.00 and then raised it to \$100.00 apiece, and finally wrote a check for \$225.00, making it payable to himself and endorsed the back of the

(Testimony of R. F. Baerman.)

check and gave the officers \$75.00 in cash besides to let him go. That the officers then took him to jail. Witness identifies Government's Exhibit No. 1 as the box that was found in the floor (Tr. p. 20). That the packages of narcotics found in the hole in the floor corresponded to the package the girl had in her hand when she came out of the hotel. Defendant identifies Government's Exhibit 3 as the package of morphine found in the possession of the girl and identifies the three one-dollar marked bills (Tr. p. 21). Witness identifies Government's Exhibit 2 as the cocaine found in the silk stocking. Whereupon the following proceedings were had:

At the close of the testimony of this witness the Government offered the three packages of morphine identified by the witness as follows:

Mr. MOUNT.—At this time, if your Honor please, I offer in evidence Government's Exhibits 1, 2 and 3.

Mr. PAGE.—I object to them upon the ground there is no warrant [17] shown for the arrest of this man in the first instance—no search-warrant as required by law.

The COURT.—Overruled.

Mr. PAGE.—Exception.

Thereupon the three packages of morphine were received in evidence and marked Government's Exhibits 1, 2 and 3.

Testimony of R. W. Latham, for the Government.

And thereupon Witness R. W. LATHAM was called by the Government and after being duly sworn, testified that he was a narcotic inspector for the Federal Government; that prior to his connection with the Federal Government he had been in the drug business and that he was a registered pharmacist; that he had practiced his profession or trade for about fifteen years and had had experience with cocaine and morphine, and that he had examined the contents of Government's Exhibits 1, 2 and 3. Witness was handed Government's Exhibits 1, 2 and 3, and testified that it contained about ten grains of morphine hydrochloride (Tr. p. 25).

Witness was handed Government's Exhibit No. 2 and testified that it contained about one ounce of cocaine hydrochloride. Witness was handed Government's Exhibit No. 1 and testified that the larger packages contained in the box, each contained forty-five grains of morphine, and the smaller packages of the exhibit each contained thirty grains of cocaine; that the contents of Government's Exhibit No. 1 were as follows: four packages of morphine each containing ten grains, three packages of morphine each containing 45 grains, five packages of morphine each containing 2 grains, one package of morphine containing five grains, twenty-two packages of cocaine each containing thirty grains, one package of cocaine containing one ounce, and

another package of cocaine containing one-half ounce."

Thereupon the government rested its case and the following proceedings took place. [18]

Mr. PAGE.—I will move the United States Attorney to elect as to which one of these counts he intends to stand on. They have offered no evidence as to Count One of the sale; the other is the possession. I am satisfied your Honor recognizes there has not been any evidence here but uncorroborated statements of the officers who sent the girl to make a sale.

COURT.—Motion denied.

Mr. PAGE.—Exception.

Thereupon evidence was introduced for and on behalf of the defendant and, after the Court had instructed the jury, the jury retired for deliberation and on the 30th day of November, 1921, returned and filed a verdict finding the defendant guilty on Count One and on Count Two of the indictment. [19]

United States District Court, Western District of
Washington, Northern Division.

No. 6243.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. HIRATA,

Defendant.

Order Settling Bill of Exceptions.

Defendant herein having tendered and presented his bill of exceptions in this cause to the action of the Court and in furtherance of justice and that right may be done, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court and made a part of the record herein, and the Court having considered said bill of exceptions and all objections and proposed amendments made thereto by the Government, and being now full advised, does now sign, seal, settle and allow said bill of exceptions as the bill of exceptions in this cause, and it is **ORDERED** that the same may be made a part of the record herein.

And the Court further certifies that each and all of the exceptions taken by the defendant, as shown in said bill of exceptions, were at the time the same were taken allowed by the Court.

And the Court further certifies that said bill of exceptions contains all the evidence in said cause and everything material to each and every assignment of error made by the defendant and tendered and filed in this cause with said bill of exceptions.

And the Court further certifies that said bill of exceptions [20] was filed and presented to the Court within the time provided by law.

Done in open Court, counsel for the Government and defendant being present, this 29th day of March, 1922.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, March 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

[Title of Court and Cause.]

No. 6243.

Petition for Writ of Error.

To the Above-Entitled Court and to the Hon. Jeremiah Neterer, Judge of the United States District Court Aforesaid:

Now comes the above-named defendant and by his attorneys, Thomas D. Page and Walter Metzenbaum and respectfully shows:

That heretofore and on the 30th day of November, 1921, a jury in the above-entitled Court and cause returned and filed herein a verdict finding the above-named defendant guilty upon Counts I and II of an indictment theretofore filed in the above-entitled Court and cause, and against the defendant herein on the 21st day of September, 1921; that thereafter and on the 24th day of December, 1921, the defendant was by the order and sentence of the above-entitled Court and in said cause sentenced to 15 months at McNeil Island Penitentiary your petitioner herein, the above-named defendant, feeling himself aggrieved by the said verdict and said judgment and the said sentence of the Court entered herein as aforesaid and by the orders and

rulings of said Court and proceedings therein, now herewith petitions this Court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States and in accordance with the procedure of said Court in such cases made and provided to the end that the said proceedings as herein recited and as more fully set forth in the assignments of error presented herewith may be reviewed and the manifest error appearing from the [22] face of the record of said proceedings may be by said Circuit Court of Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by the law and the ruling of the Court is provided, whereupon the premises considered, your petitioner prays that a writ of error do issue to the end that the said proceedings of the United States District Court for the Western District of Washington may be reviewed and corrected, the said errors in said record being herewith assigned and presented herewith; that pending the final determination of said writ of error by said Appellate Court an order be made and entered herein that all further proceedings shall be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals.

T. D. PAGE,

WALTER METZENBAUM,

Attorneys for Petitioner, the Plaintiff in Error.

Due and legal service of the foregoing petition

for a writ of error is admitted this 2d day of December, 1921.

U. S. Attorney.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 24, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

[Title of Court and Cause.]

No. 6243.

Assignment of Errors.

Now comes the defendant, K. Hirata, and in connection with his petition for a writ of error in this cause, assigns the following errors which said defendant avers occurred on the trial thereof, and upon which he relies to reverse the judgment entered herein as appears of record.

I.

The Court erred in overruling the defendant's motion to dismiss the cause on the ground that no search-warrant was used or issued at the time of the search of the defendant's premises and the seizure of the contraband to be used as evidence, which motion was interposed at the time the cause was called for trial and before the impanelling of the jury.

II.

The Court erred in refusing to grant the motion

of the defendant to strike all of the testimony of N. P. Anderson, a witness for the plaintiff, which motion was based upon the ground that the testimony of this witness and the evidence introduced by him was based upon and secured by reason of illegal search of defendant's premises.

III.

The Court erred in refusing to permit the defendant to interrogate the witness, N. P. Anderson, a witness for the plaintiff, as to whether he had searched the premises of the defendant without a search-warrant and as to whether the witness knew that it was a [24] criminal offense under the laws of the State of Washington to search a man's home or place of business without a valid search-warrant.

IV.

The Court erred in admitting in evidence over the objection of the Defendant's Exhibits Nos. 1, 2 and 3 introduced by the plaintiff for the reason that said exhibits were secured by an illegal and invalid search and seizure.

V.

The Court erred in denying the defendant's motion to require the plaintiff to elect as to which of the counts of the indictment it would stand on for a conviction.

VI.

The Court erred in submitting this cause to a jury for the reason that there was no evidence upon which a conviction could be sustained.

VII.

The Court erred in denying the defendant's motion for a new trial herein which motion was made in due time as the jury had returned a verdict of guilty and was upon the following grounds:

1. That said verdict was against and contrary to law.

2. That said verdict was against and contrary to the evidence.

3. Insufficiency of the evidence to justify the verdict.

4. Error of law occurring during the trial and excepted to at the time by the defendant.

VIII.

The Court erred in imposing the sentence herein.

WHEREFORE the defendant, K. Hirata, prays that the judgment of said court be reversed and this cause remanded to the said District Court with directions to dismiss the same and discharge said defendant [25] from custody and exonerate the sureties on his bail bond.

WALTER METZENBAUM,

T. D. PAGE,

Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 24, 1921. F. M. Harshberger, Clerk, By S. E. Leitch, Deputy. [26]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 6243.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. HIRATA,

Defendant.

Order Allowing Writ of Error.

Now on this 24th day of December, 1921, came the defendant, K. Hirata, and filed herein and presented to the Court his petition praying for the allowance of his writ of error intended to be urged by him which petition was accompanied by an assignment of errors relied upon by the defendant, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such order and further proceedings may be had as may be proper in the premises, and that an order be made approving the bond heretofore furnished by the defendant and staying all further proceedings until the determination of said writ of error by the said Circuit Court of Appeals, now, in consideration of said petition and being fully advised in the premises the Court does hereby allow the said writ of error, and

IT IS HEREBY ORDERED that the security furnished by the defendant for his appearance whenever required according to the conditions of his bond is hereby approved and all further proceedings are hereby suspended herein until the determination of said writ of error by the said Circuit Court of Appeals.

JEREMIAH NETERER,

Judge of the United States District Court, for the
Western District of Washington, Northern
Division. [27]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 23, 1921. F. M. Harshberger, Clerk, By S. E. Leitch, Deputy. [28]

[Title of Court and Cause.]

No. 6243.

Stipulation Re Printing Transcript of Record.

It is hereby stipulated between plaintiff and defendant through their respective attorneys that the following designated papers comprise all the papers, exhibits and proceedings which are necessary to the hearing of the cause upon writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, and that none of said papers need to be included in the record of said Court:

Indictment, Plea, Verdict, Motion for New Trial, Order Overruling Motion for New Trial, Bond, Bill of Exceptions, Petition for Writ of Error, Assign-

ment of Errors, Allowance of Writ of Error, Writ of Error, Citation on Writ of Error, Stipulation as to Record, Clerk's Certificate.

It is further stipulated that, in preparing the printed record all captions except upon Writ of Error, Citation on Writ of Error and Order Allowing Writ of Error may be omitted.

And it is further stipulated that the time for filing bill of exceptions as well as that for filing record by defendant in the Clerk's office in the above-entitled court may be extended to and including June 12th, 1922.

THOMAS P. REVELLE,

JUDSON F. FALKNOR,

Attorneys for Plaintiff.

WALTER METZENBAUM,

Attorney for Defendant. [29]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jun. 7, 1922. F. M. Harshberger, Clerk, By S. E. Leitch, Deputy. [30]

[Title of Court and Cause.]

No. 6243.

Praeipice for Transcript of Record.

To the Clerk of the above-entitled Court:

You will please make up the transcript on appeal of the above numbered and entitled cause for printing the record thereof for the Ninth Circuit Court of Appeals at San Francisco:

Indictment.

Plea.

Verdict.

Motion for new trial.

Order overruling motion for new trial.

Bond.

Amended bill of exceptions.

Petition for writ of error.

Assignment of errors.

Allowance of writ of error.

Writ of error.

Citation on writ of error.

Stipulation as to record.

Clerk's certificate.

WALTER METZENBAUM,
Attorney for Appellant and Plaintiff in Error,
K. Hirata.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jun. 7, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [31]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 6243.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. HIRATA,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 31 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing-entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I hereby further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [32]

Clerk's fee (Sec. 828 R. S. U. S.) for	
making record, certificate or return,	
64 fo. at 15c.....	\$9.60

Certificate of Clerk to transcript of record, 4 folios at 15c.....	.60
Seal to said certificate.....	.20

I hereby certify that the above cost for preparing and certifying record, amounting to \$10.40, has been paid to me by attorney for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error, original citation, together with two original orders extending time to file the record herein.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 10th day of June, 1922.

[Seal] F. M. HARSHBERGER,
Clerk U. S. District Court, Western District
of Washington. [33]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. —.

K. HIRATA,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error.

The United States of America,—ss.

The President of the United States of America, to the Hon. JEREMIAH NETERER, Judge of the District Court of the Western District of Washington, Northern Division, and to said Court, GREETING:

Because in the record and proceedings as also in the rendition of the judgment and sentence in the District Court of the United States for the Western District of Washington, Northern Division, in a cause pending therein, wherein the United States of America was plaintiff and K. Hirata, defendant, a manifest error happened and occurred to the damage of the said K. Hirata, the above-named plaintiff in error as by his petition and complaint doth appear, and we being willing that error, if any there hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that under your seal you send the record and proceedings aforesaid with all things concerning the same and pertaining thereto to the U. S. Circuit Court of Appeals for the Ninth Circuit, together with this writ so that you may have the same at San Francisco where said court is sitting within thirty days from the date hereof in the said Circuit Court of Appeals to be then and there held and the records and proceedings aforesaid being inspected the said United States Court of Appeals may cause further

to be done therein to correct the error what of right and according to the law [34] and the custom of the United States should be done.

WITNESS the Hon. WILLIAM HOWARD TAFT, Chief Justice of the United States this 23d day of December, 1921.

[Seal]

F. M. HARSHBERGER,
Clerk.

Allowed this the — day of December, 1921.

United States Judge.

Received a copy of the foregoing writ of error this — day of December, 1921.

U. S. Attorney.

Filed in the United States District Court Western District of Washington, Northern Division. Dec. 24, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [35]

In the United States District Court, Western District of Washington, Northern Division.

No. —.

K. HIRATA,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear in a session of the U. S. Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, state of California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein K. Hirata is plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against K. Hirata, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States, for the Western District of Washington, this 30th day of Dec. 1921.

[Seal]

JEREMIAH NETERER,

Judge.

Receipt of a copy and service of the foregoing citation this 30th day of December, 1921 is hereby admitted.

THOMAS P. REVELLE,

United States Attorney.

JUDSON F. FALKNOR,

Asst. U. S. Atty.

Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 30, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [36]

In the U. S. District Court, Western District of Washington, Northern Division.

#6243.

STATE OF WASHINGTON,

Pltff.

vs.

K. HIRATA,

Defdt.

**Order Extending Time Thirty Days to File Bill
of Exceptions and Citation.**

On reading the stipulation heretofore entered into by counsel for above parties, the time for defendant in which to file his bill of exceptions is hereby extended 30 days from date of this order; and citation is also extended to same date.

Done in open court this Jun. 24/22.

EDWARD E. CUSHMAN,

Judge.

Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 24, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [37]

In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.

No. 6243.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. HIRATA,

Defendant.

**Order Extending Time to and Including June 12,
1922, to File Record and Docket Cause.**

Now, upon the motion of defendant and good
cause being shown, it is hereby

ORDERED that the time for preparing and cer-
tifying for printing the transcript for appeal in the
above-entitled cause be, and the same is hereby
extended to and including June 12th, 1922.

Done in open court this 5th day of June, 1922.

J. NETERER,

Judge.

Filed in the United States District Court, West-
ern District of Washington, Northern Division.
Jun. 7, 1922. F. M. Harshberger, Clerk. By S. E.
Leitch, Deputy.

[Endorsed]: No. 3886. United States Circuit
Court of Appeals for the Ninth Circuit. K. Hirata,
Plaintiff in Error, vs. The United States of America,
Defendant in Error. Transcript of Record. Upon

Writ of Error to the United States District Court
of the Western District of Washington, Northern
Division.

Filed June 13, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

